

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

MAY 11 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service)	
)	
Tennessee State Department	)	Applicant I.D.
of Education,	)	No. 145698
)	
Application (FCC Form 471)	)	Universal Service Control
For Approval of Funding	)	Nos. 218930000130961

To: The Commission

Schools and Libraries Division
Universal Service Administrative Company

Opposition

To

Objection and Request for Public Inspection

No. of Copies rec'd 074
List A B C D E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service)	
 Tennessee State Department	)	Applicant I.D.
of Education,	)	No. 145698
 Application (FCC Form 471)	)	Universal Service Control
For Approval of Funding	)	Nos. 218930000130961

To: The Commission

Schools and Libraries Division
Universal Service Administrative Company

Opposition

To

Objection and Request for Public Inspection

The State of Tennessee ("Tennessee"), acting by and through its Department of Education, herein respectfully submits its Opposition ("Opposition") to the Objection and Request for Public Inspection ("Objection") filed in the above-captioned Matter on April 26, 1999, by Integrated Systems and Internet Solutions, Inc. ("ISIS 2000"). In its Objection, ISIS 2000 asks the Administrator, Schools and Libraries Division ("SLD"), Universal Services Company, not to act in the regular course on Tennessee's Applications for Universal Service

Fund (“USF”) support for USF Funding Year II (i.e., 1999-2000), but rather to make these Applications available for public inspection and comment. The ISIS 2000 request in this regard should be denied as contrary to the Commission’s Rules, and to the public interest.

I.

First, the Commission’s Rules do not provide for the comment and review pleading cycle requested by ISIS 2000. Section 54.719 of the Commission’s Rules (47 CFR § 54) provides, in pertinent part, as follows:

“54.719(c) Any person aggrieved by an action taken by the Administrator...may seek review by the Federal Communications Commission.” [Emphasis Added]

Thus, pending an initial decision by the Administrator, the Rules do not provide for the comment and review pleading cycle requested by ISIS 2000. To the extent that ISIS 2000 seeks relief not provided for by the Rules, it should be denied.

II.

Second, ISIS 2000 is effectively requesting a comment and review pleading cycle which is premature and may be unnecessary. Since no action has been taken by the Administrator, no comment and review ultimately may be needed, or desirable. The need for review will only be known after the Administrator acts, or neglects to act. Thus, the ISIS 2000 request should be denied as premature

III.

Third, the Commission's Rules implicitly reject the delay which is the natural result of the ISIS 2000 request. Section 54.724 of the Commission's Rules provides as follows:

“54.724 The Commission shall issue a written decision in response to a request for review of an Administrator's decision that involves novel questions of fact, law or policy within ninety (90) days.” [Emphasis Supplied]

Thus, the Rules clearly require the Administrator to act on all Applications, as received, and to require those Parties opposed to Applications to seek review from the Commission, under an explicit, single 90-day review and comment cycle. This requirement is to ensure both prompt review and that the funds to support an Application remain available following a review. Delays which prevent action, directly or indirectly, under the “90-day Rule”, are contrary to the Rules. ISIS 2000's request would effectively deny Applications a single prompt (and impartial) review, and ensure the unavailability of funding due to delays. This is a denial of “due process” and equity.

IV.

Fourth, the acceptance of yet an additional review and comment pleading cycle would be extremely detrimental and costly to the schools, in terms of both money and service availability. By way of example, in the case of the Tennessee's Applications for USF Funding Year I, ISIS 2000 has filed over seventeen (17) requests with the Administrator, and others. These were filed prior to seeking Commission review under Section 54.719 of the Rules. Each of these filings have necessitated a Tennessee response, to correct the record. And, while a corporation like ISIS

2000 (and its parent Great Universal) can expend significant sums (estimated at over \$300,000) to “aggressively pursue this new business opportunity”, the Schools cannot. The Schools’ funding of this expense will ultimately have to come from its K-12 schools, which in turn will act to reduce the quantity of Internet Access Services obtained. Further, since USF funding is delayed (See 47 CFR § 54.725(a)), the Services themselves to the schools will be delayed. This is very costly to students, which have a limited “learning window” to benefit. Thus, the ISIS 2000 request should be denied because it will result in irreparable harm to the nation’s children.

V.

Fifth, and finally, the release of financial information in pending Applications, prior to an initial funding Decision, as ISIS 2000 well knows, only serves to provide an anti-competitive advantage for disgruntled-bidders under the USF Rules. This information ultimately will become available, and will be subject to scrutiny and review as required by the Rules, thus there is no irreparable harm to ISIS 2000 in rejecting its request for this information. If this information is to be released prematurely, all Applicants will be forced to file financial information under a request for confidentiality and/or to seek privacy protections until all awards and funding is “final” to protect bidders. Each of these are expensive and time-consuming, and totally unnecessary to ensure reasoned decision-making by the Commission.

Conclusion

Accordingly, Tennessee hereby opposes the ISIS 2000 requests as contrary to the Commission’s Rules, to the public interest in reasoned decision-making and to the interests of the nation’s school children. Furthermore, Tennessee cites the current Objection as yet an

additional example of a frivolous pleading, and of how ISIS 2000 has patently abused the Commission's process in order to overturn a State contract, which has been found properly awarded under State Rules. The ISIS 2000 Objection should be denied. Further, to prevent a reoccurrence, the Commission should recognize this behavior as detrimental and contrary to the public interest.

Sincerely,

STATE OF TENNESSEE


By: William K. Coulter
William K. Coulter, Esq.
Its Attorney

William K. Coulter, Esq.
Coudert Brothers
1627 I Street, N.W.
Suite 1200
Washington, DC 20006
Tel: (202) 736-1811

May 11, 1999

AFFIDAVIT

I, JACQUELINE B. SHRAGO, the undersigned, do hereby declare under penalty of perjury that the facts contained in the foregoing response of the Tennessee Department of Education are true and correct.



Jacqueline B. Shrargo

Executed on this 11th day of May, 1999.

CERTIFICATE OF SERVICE

I, Christine L. Zepka, hereby certify that copies of the foregoing Reply to Opposition of the Tennessee Department of Education were mailed, postage prepaid, on this 11th day of May, 1999, via first class mail, to the following individuals at the address listed below:

William E. Kennard, Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Harold Furchgott-Roth
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Christopher J. Wright, Esq.
General Counsel
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8-C723
Washington, D.C. 20554

Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554


Irene Flannery, Chief
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554

General Counsel
Schools & Libraries Division
Universal Service Administrative Co.
1023 15th Street, NW, #200
Washington, D.C. 20005

Jeffrey S. Linder, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel to Education Networks of America

Ramsey L. Woodworth, Esq.
Robert M. Gurss, Esq.
Rudolph J. Geist, Esq.
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554


Christine L. Zepka